

TRANS-OVERSEAS CORP MOTOR CARRIER/BROKER AGREEMENT

This Agreement between _____, a _____ organized under the laws of _____ (“Carrier”), and **TRANS-OVERSEAS CORPORATION a Customs Broker/Freight Forwarder/Third Party Logistics Company organized under the laws of the State of Michigan** (“Broker”)(or collectively “Parties”) is entered into for the purpose of specifying the terms and conditions under which Broker will engage Carrier to perform motor contract carriage and related services for Shippers (the “Services”), and under which Carrier will render those Services.

TERMS AND CONDITIONS

1. LEGAL STATUS OF PARTIES AND SERVICES

1.1 **Representations.** Carrier represents and warrants that it is duly registered with FMCSA as a for-hire motor carrier of property in interstate and foreign commerce pursuant to 49 U.S.C. § 13902. Broker represents and warrants that it is duly registered with FMCSA as a property transportation broker pursuant to 49 U.S.C. § 13904. If such registration is no longer required in the future, Broker represents and warrants that it meets the definition of “broker” found at 49 U.S.C. §13102(2) and shall function accordingly. The Parties shall render all Services in a competent and professional manner, and in accordance with all applicable federal and state laws and regulations of the jurisdiction(s) within which the Services are rendered.

1.2 **Contract Carriage.** All Services performed by Carrier pursuant to this Agreement shall be as a motor carrier of property in United States interstate or foreign commerce and shall be rendered as contract carriage within the meaning of 49 U.S.C. §§ 13102(4)(B) and 14101(b). In connection with contract carriage Services, Broker and Carrier hereby expressly waive all provisions of Chapters 137 and 147 and any other provisions of Subtitle IV, Part B of Title 49, United States Code, to the extent that such provisions are in conflict with express provisions of this Agreement. The Parties do not, however, waive the provisions of that subtitle relating to registration, insurance, or safety fitness.

1.3 **Relationship of parties.** The relationship of Carrier to Broker is that of an independent contractor. By this Agreement the Parties do not intend to provide for division of profits between Carrier, Broker and/or any Shipper, or to clothe Broker and/or any Shipper with joint control over Carrier’s performance of the Services, or otherwise to create a *de facto* or *de jure* joint venture, joint enterprise or partnership between Carrier, Broker and/or any Shipper. Under no circumstances shall employees or agents of Carrier be deemed employees or agents of Broker or Shipper, nor shall Broker or Shipper be liable for any wages, fees, payroll taxes, assessments or other expenses relating to employees or agents of Carrier.

2. SCOPE OF SERVICES

2.1 **FMCSA Requirements.** Under no circumstances, however, shall Carrier render Services beyond the scope of its FMCSA registration (as it may be amended from time to time) unless the Services are exempt from legal requirements for such registration or authority.

2.2 **Carrier** shall not subcontract any Services to third parties without giving prior notice to Broker and obtaining Broker’s consent. Any such subcontracting, with or without notice and consent, shall not affect Carrier’s responsibilities or liabilities to Broker under this Agreement. As between Broker and Carrier, all costs of rendering the Services (including compensation of subcontractors as well as payment of all taxes or other governmental assessments imposed on Carrier) shall be borne solely and exclusively by Carrier. The prohibition against subcontracting does not apply to a person leased to the Carrier pursuant to the provisions of 49 C.F.R. Part 376.

2.3 **Broker** shall not ask or in any way pressure Carrier to violate any federal, state or other applicable law with regards to the performance of the Services. By arranging for transportation of shipments by Carrier pursuant to this Agreement, Broker represents and warrants that it has conducted due diligence with regard to the creditworthiness of Shippers tendering such shipments, and that it vouches for same.

2.4 **Non-Exclusivity of Services.** Neither Party intends to give the other Party any exclusive rights or privileges under this Agreement. Except as otherwise stated in this Agreement, either party may contract with or otherwise provide service to any other motor carrier, broker, other intermediary or shipper.

2.5 Backselling of Services. In the event that either Party is able to provide concurrent services, neither party shall contract or otherwise provide rates or service to either Party's respective client or customer, without the expressed permission of the opposite party.

3. RATES, CHARGES, TERMS AND CONDITIONS FOR SERVICES

3.1 Rates and Charges. Carrier shall be entitled to the rates and charges agreed to by the Carrier and Broker as its sole and exclusive compensation for rendering the Services (including any Services subcontracted to third parties or performed in a capacity other than as a motor carrier, with or without the notices and consents required under Sections 2.2). Any rates or charges intended to apply only to particular Shippers shall be separately set forth and agreed to on a case by case basis and shall be confirmed in writing by both parties. No shipment tendered by Broker to Carrier within the geographic and commodity scope of this Agreement shall be subject to rates or charges set forth in any tariff or rate schedule maintained by Carrier, unless those rates and charges are agreed to in writing by both parties. Rates and charges set forth on the date the shipment is tendered to the Carrier by the Broker shall not be changed except by following the amendment procedures set forth in Article 12.3. Attachment 1 sets forth miscellaneous terms, conditions and business rules for specific Services (if applicable).

3.2 Invoicing and Payment. Invoicing procedures [*including electronic invoicing*], payment due dates and any late payment penalties shall be paid under Net 30 Terms unless otherwise agreed to by both parties. Except as otherwise provided in Customer-Specific Addenda with respect to particular Shippers, the Parties agree as follows:

- (a) It shall be Carrier's responsibility to invoice Broker for the freight charges owing to Carrier.
- (b) It shall be Broker's responsibility to invoice Shippers for Carrier's freight charges and Broker's commissions or other fees, and to take necessary measures to collect such invoices.
- (c) It shall be Broker's responsibility to remit freight charges owed to Carrier within the time periods set forth above, regardless of any late payment or non-payment to Broker by Shippers.
- (d) Carrier will have no responsibility for collection or payment of Broker's commissions or other fees unless otherwise agreed to.

3.3 Pricing Disputes. If Carrier alleges underpayment of applicable freight rates and charges by Broker, or if Broker alleges overcharges, overcollection or receipt of duplicate payments by Carrier, notice of such claims must be given in writing by the aggrieved Party to the other Party within one hundred eighty (180) days after delivery or the first attempted delivery of the involved shipment(s) by Carrier. The Party receiving any such claim shall process it in accordance with the provisions codified at 49 C.F.R. Part 378 as of the Effective Date of this Agreement. Any civil action or arbitration proceeding with respect to such a claim shall be filed within eighteen (18) months after delivery or the first attempted delivery of the involved shipment(s) by Carrier.

3.4 Customs and Security Requirements.

- (a) Carrier shall be responsible for ensuring compliance with those customs and security laws that are applicable to motor carriers transporting goods either domestically in the United States or for import or export from or to the United States.
- (b) Broker shall be responsible for ensuring that the shipper and consignee of any freight tendered to motor carrier under this Agreement have complied with all customs and security laws of the United States and other country, as applicable, with respect to motor carrier transportation of goods either domestically in the United States or for import or export from or to the United States, including the preparation of all documents and the payment of all applicable fees required by any government agency.

4. FREIGHT DOCUMENTATION

The terms of this Agreement and any addendums thereto shall apply to all shipments tendered to Carrier within the scope of the load tender provided by the Broker and shall take precedence over any conflicting terms contained in any bill of lading, receipt or other transportation document (Shipment Document) issued for all shipments tendered by a Shipper within the scope of the Services. Except as otherwise permitted by Customer-Specific Addenda to the load tender or agreed to in writing by both the Carrier and the Broker, the Carrier shall use only the broker's bill of lading and said document will show the shipment tendered to the Broker, in the care of the Carrier.

5. INSURANCE; BROKER BOND

5.1 Broker shall at all times maintain a surety bond/trust in an amount no less than \$75,000.00. The form and terms of the bond shall be consistent with the provisions of FMCSA Form BMC 34 as that form was in effect on January 1, 2005.

5.2 Carrier shall maintain cargo liability insurance in the amount of \$100,000.00 per occurrence, at a minimum.

5.3 Upon either Party's request, the non-requesting Party shall furnish the requesting Party with certificates from the insurers or trustee evidencing such coverages and providing for not less than thirty (30) days' advance written notice of cancellation or non-renewal of coverage or trust, or shall cause the insurers or trustee to name the requesting Party as an additional insured or beneficiary for the sole purpose of receiving such 30-day advance written notices of cancellation or non-renewal.

6. CARGO LIABILITY

6.1 Generally. Except as otherwise provided herein, the Carrier's liability for cargo loss or damage shall be governed by the provisions of 49 U.S.C. § 14706. Claims for loss of or damage to cargo shall be filed and processed in accordance with 49 C.F.R. Part 370 as in effect on the Effective Date of this Agreement, except that if the claim is filed by Broker it must be accompanied by proof (such as a signed power of attorney, a written assignment of the claim, or other evidence satisfactory to Carrier) that the involved Shipper has granted Broker full authority to resolve the claim. Claims must be filed, and any litigation on such claims must be commenced, within the minimum time frames (9 months and two years, respectively) as permitted in 49 U.S.C. § 14706(e).

6.2 Sealed Trailers. Carrier's driver must be present and supervise the loading/unloading of all freight. If Shipper requires that driver not be present and loads and seals a trailer or semitrailer tendered to Carrier without a representative of Carrier inspecting and counting the cargo during the loading process, or unloads the trailer or semitrailer under the same criteria, Broker shall absolve Carrier of any liability for shortages or damage upon delivery of the trailer or semitrailer with the seal intact. Broker shall similarly absolve Carrier if the seal was broken only at the direction and under the supervision of an agent for the Bureau of Customs and Border Protection or other governmental authority and Carrier applies another seal to the trailer under the observation of said Customs and Border Protection agent and notes the new seal number on the bill of lading or other shipping document. In such an event, Carrier is required to notify Broker of the new seal number in a timely manner to the best of their capabilities.

6.3 Shipper's Load and Count. If a Shipper preloads trailers or semitrailers and a representative of Carrier is not present to verify cargo count or stowage adequacy during the loading process, the load shall be considered as moving on a "shipper's load and count" basis regardless of whether it is sealed or whether "SL&C" or a similar notation appears on the Uniform Receipt.

7. REFUSED FREIGHT; SALVAGE, AND WAREHOUSE LIABILITY

The provisions of the most current version of the National Motor Freight Classification's Uniform Straight Bill of Lading governing refused freight, salvage and Carrier's status and liability as a Warehouse shall be incorporated by reference into this Agreement.

8. INDEMNIFICATION; NO CONSEQUENTIAL DAMAGES

8.1 Hold Harmless. Except as otherwise specifically provided in Article 6 with regard to cargo loss and damage liability, Broker and Carrier shall indemnify each other (including their respective employees and agents) and hold each other harmless from and against all claims, liabilities, losses, damages, fines, penalties, payments, costs and expenses (including reasonable legal fees) to the extent proximately caused by or resulting from the negligence or intentional acts of the indemnifying Party, including its employees or agents, in connection with the performance of this Agreements or the Services. The previous sentence, however, shall not apply to the extent that such claims, liabilities, losses, damages, fines, penalties, payments, costs or expenses are proximately caused by or result from the negligence or intentional acts of the indemnified Party, including its employees or agents.

8.2 Consequential Damages Excluded. EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER AND CARRIER SHALL NOT BE LIABLE TO SHIPPER OR INDEMNIFY BROKER FOR ANY LIABILITY TO SHIPPER FOR ANY INDIRECT OR CONSEQUENTIAL DAMAGES (SUCH AS, BUT NOT LIMITED TO, LOSS OF PROFITS, LOSS OF MARKET, LOSS OF CUSTOMER GOODWILL, ASSEMBLY LINE SHUTDOWNS, OR PUNITIVE OR EXEMPLARY DAMAGES), REGARDLESS OF WHETHER THE

CLAIM FOR SUCH DAMAGES SOUNDS IN CONTRACT, TORT, BREACH OF WARRANTY, CONSUMER FRAUD, OR OTHERWISE.

Broker shall indemnify Carrier (including the Carrier's employees and agents) and hold Carrier harmless from and against all claims by a Shipper for any indirect or consequential damages, or liabilities, losses, damages, fines, penalties, payments, costs and expenses (including reasonable legal fees) arising from such claims.

9. FORCE MAJEURE; LEGAL RESTRAINT

If either Broker or Carrier is prevented from or delayed in performing any of its obligations under this Agreement by reason of statutes, regulations or orders of a governmental entity (including actions taken by a court or by law enforcement officials), or because of war, terrorism, acts of God, labor disturbances, civil unrest, or any cause beyond the reasonable control of such Party, that Party shall not be liable to the other Party for damages by reason of any delay or suspension of performance resulting from such legal restraints or force majeure. The Party invoking this Article, however, shall furnish the other Party with Subsequent Notice of same no more than two Business Days after the onset of the conditions delaying or preventing performance.

10. DISPUTE RESOLUTION

Having entered into this Agreement in good faith, the Parties agree that the terms and procedures set forth in Attachment 1 hereto shall be controlling if a dispute arises with regard to its application or interpretation.

11. CONFIDENTIALITY; BACK-SOLICITATION

Except to the extent required by law, neither Party shall disclose to third parties (other than to freight bill auditors, prospective capital providers, and outside professionals, if such parties agree to similar confidentiality terms) either the terms of this Agreement or any confidential or proprietary information either Party learns about the other in the course of performing Services under this Agreement, including but not limited to software, business methods, customer lists, or the rates, valuation, origin, destination and consignee identity for any shipment within the scope of the Services. Except upon a material breach of this Agreement by Broker, Carrier shall refrain from directly soliciting freight business during the term of this Agreement, or for 12 months thereafter, from any entity which (i) was not solicited by Carrier prior to the Effective Date and (ii) actually tenders at least ___ shipments to Carrier during the term of this Agreement.

12. MISCELLANEOUS

12.1. Governing Law. Except to the extent that the application of such laws is prohibited by the provisions of 49 U.S.C. § 14501(c) or other law, this Agreement shall be interpreted in accordance with the laws of the State of Michigan, disregarding any choice-of-law principle under which that State would look to the laws of another jurisdiction.

12.2. Notices. Any Notice required or permitted under this Agreement shall be deemed sufficient if sent by prepaid first-class mail, by a nationally recognized overnight courier, or by facsimile transmission, if such Notice is sent to the address or fax number of, and marked to the attention of the individual noted in the signatory provision of this Agreement or to any other individual designated by the Party. Notices shall be considered to have been received by the addressee Party on the third Business Day after mailing, on the first Business Day after deposit with an overnight courier, or on the day a facsimile is transmitted if the sending machine produces written confirmation of a successful transmission. Each Party may change its designated contact, or update the contact information for such individuals, by Prior Notice to the other Party in accordance with this Article 14, and without formal amendment of this Agreement under Article 12.3.

12.3. Entire Agreement; Amendments. This Agreement represents the entire agreement and understanding of the Parties with regard to its subject matter. No prior understandings or agreements of the Parties, whether written or oral, nor any documents not specifically incorporated into this Agreement, nor any course of conduct of the Parties before or after the Effective Date of this Agreement, shall have the effect of modifying the Parties' rights and obligations under this Agreement in any way. Except as provided in Article 12.2 with regard to changes in Designated Contact information and listings, no amendment to this Agreement shall be valid unless it is set forth in writing, is marked with a unique amendment number, specifies the articles, sections and/or Attachments being amended, specifies an effective date for the amendments, and is signed by Designated Contacts of both Parties.

12.4. Severability. To the extent that any provision of this Agreement may be held to be invalid or unenforceable by a court of competent jurisdiction, such provision shall become ineffective as to all matters within the jurisdiction of that court. The court's holding, however, shall not be treated as affecting the validity or enforceability of any other provision of this Agreement, nor as affecting the validity or enforceability of any part of this Agreement in other jurisdictions.

12.5. Waiver. Neither the failure of a Party to exercise any right, power or privilege under this Agreement, nor its delay in any such exercise, shall operate as a waiver of that right, power or privilege. No such waiver shall be binding on either Party unless it is in writing and signed by a Designated Contact of the Party against which the waiver is asserted. No such waiver on one occasion shall preclude subsequent full enforcement of a Party's rights, powers and privileges under this Agreement or at law or in equity.

12.6. Successors and Assigns. This Agreement shall be binding on, and shall inure to the benefit of, both Parties as well as their respective successors and permitted assigns. Assignment of this Agreement by either Party requires Prior Notice to and Consent by the other Party. Neither Party shall unreasonably withhold Consent for an assignment by the other Party to an Affiliate of the assigning Party, provided that the Affiliate first agrees in writing to comply with all terms and conditions of this Agreement.

12.7. Term of Agreement. This Agreement shall remain in full force and effect for a one-year period following the Effective Date, and thereafter shall be renewed automatically on a year-to-year basis, unless and until terminated as set forth in the next sentence. Either Party has the right to terminate this Agreement at any time, with or without cause, by providing Prior Notice to the other Party at least thirty (30) calendar days in advance of the proposed termination date (unless a shorter notice period is specified in particular circumstances by particular provisions of this Agreement as amended from time to time). If any shipment within the scope of the Services remains in transit on the effective date of a termination of this Agreement, both Parties' rights and duties under this Agreement shall remain in effect with respect to such shipment until it is delivered and all related invoices and claims are satisfied.

12.8. Counterparts. This Agreement may be executed in one or more counterparts, any and all of which shall constitute one and the same instrument.

12.9. Captions. The captions and headings set forth in this Agreement are for convenience only. They shall not be considered a part of this Agreement, nor affect in any way the meaning of its terms and conditions.

WHEREFORE, the Parties have executed this instrument as their legally binding agreement as of the Effective Date first written above.

_____ (BROKER)

By its Designated Contact:

Signature: _____

Printed Name: _____

Title: _____

Address: Trans-Overseas Corporation

28000 Goddard Rd

Romulus, MI 48174

Telephone: 734-946-8750

Facsimile: 734-946-1243

Other Designated Contact(s), if any:

_____ (CARRIER)

By its Designated Contact:

Signature: _____

Printed Name: _____

Title: _____

Address: _____

Telephone: _____

Facsimile: _____

Other Designated Contact(s), if any:

LIST OF ATTACHMENTS

Attachment No.	Description
1	Rates, charges, terms and conditions for Services (including Customer-Specific Addenda)
2	Dispute Resolution

ATTACHMENT 1
FREIGHT CHARGES
ACCESSORIAL and MISCELLANEOUS CHARGES

1. Basic Freight Charges. The Parties agree that Carrier shall be paid for its transportation services in accordance with the rate confirmation signed by the Parties and tendered at the outset of the shipment or in accordance with the rate agreed upon via email between Broker and Carrier, which can only be changed by the written agreement of the Parties. Broker also agrees to notify Carrier at least twenty-four (24) hours before the time of tendering a load that has a value exceeding \$100,000.00, and Carrier shall have the right to refuse any such load.

2. Mileage Computation. If any payment is specifically based on a mileage basis, mileage will be determined by the practical mileage route determined by the following software: PC Miler version 31.4.44.6672. New versions of this software will not automatically be adopted under this Agreement, and must be specifically agreed to by the Parties in writing.

3. Fuel Surcharge. Freight charges will include the fuel surcharge for the purposes of billing on all invoices unless otherwise agreed to in writing by Broker. If agreed to in writing, the current fuel surcharge percentage will be advised to Broker every Tuesday via email unless otherwise agreed to by both parties.

4. Carrier Driver/Equipment Requirements. Trailer must be clean and free of debris, odors or holes/visible damage. Any trailer that fails to meet these requirements will be rejected and a trailer that meets requirements must be brought back to the shipper at carrier's cost. If Carrier is unwilling and/or unable to replace the trailer, Carrier will forfeit any claim to additional charges pursuant to a cancellation of the shipment by the Broker.

4. Applicability to Commercial Zone.

- (a) If rates are based on zip codes as a territorial description, they shall include the geographical area encompassed by the zip code destinations of the United States Postal Service.
- (b) If rates are specified to a particularly stated origin and/or destination, they shall not include or apply the commercial zone of the points.

If rates are intended to include commercial zones, the Parties initial and agree that the commercial zone will be determined as set forth in 49 C.F.R. Part 372. Carrier _____ Broker TOC

5. Payments. All payments, whether involving a domestic or international shipment shall be made in U.S. currency and at U.S. rate of exchange. The provisions of 49 U.S.C. § 13707 are hereby waived and the following payment terms apply:

Settlements paid within 30 days from the date invoice is received. All invoices must include a signed delivery receipt, bill of lading and order # and be sent to:

Trans-Overseas Corporation Attn: Accounts Payable
28000 Goddard Rd
Romulus, MI 48174

Or:

Emailed to Accounts-Payable@Trans-Overseas.com

6. Detention of Trailer with Tractor or Box Truck. Upon Carrier's offering of a trailer with tractor for loading or unloading, Shipper or Shipper's consignee, as the case may be, shall be allowed, without charge, 2 hours to complete such loading or unloading and release the equipment for dispatch. If 1 Hour has elapsed without either the Shipper or Shipper's consignee starting to load or unload the trailer, Carrier shall notify Broker in a timely manner so as to allow Broker to intervene on Carrier's behalf and accelerate the loading/unloading process. If Shipper or Shipper's consignee fails to complete the loading or unloading and release the equipment for dispatch within the 2 hour period, Carrier shall advise Broker of the standard hourly detention rate and Broker shall pay Carrier the standard detention rate per hour for each hour or fraction thereof in excess of the 2 hour period the Driver/Trailer is detained. If Carrier fails to notify Broker at the 1 Hour point after arrival, of Shipper or Shipper's consignee failing to begin loading/unloading the trailer, Broker will pay detention at 50 percent of the standard detention rate. If Carrier fails to provide proof of detention as set forth in Section 8 below, Carrier shall forfeit all detention charges at that location. Shipper shall use the trailer with tractor for the sole purpose of loading and/or unloading the lading within the scope of this Agreement.
7. Truck Ordered and Not Used. If Broker or Shipper requests that a tractor with operator be made available with a load tender or rate confirmation issued, and cancels its request, Carrier shall notify Broker of the standard charge for the cancellation in writing to be agreed to, in writing by Broker. If no charge is advised by Carrier, a maximum charge of \$250.00 shall be awarded by Broker as compensation for the lost revenue.
8. Determination of Detention Period. For purposes of determining the number of hours and/or days that a tractor, trailer, or operator is detained by Shipper or Shipper's consignee for loading or unloading, Carrier may use, in its reasonable discretion, any reliable method of determining the date and time that a tractor, trailer, or operator is offered for loading or unloading including, without limitation, a signed bill of lading or delivery receipt, Qualcomm report, satellite communication, or on-board tracking device. Holidays and weekends shall be counted in determining the length of any detention period.
9. Reconsignment. If Broker or Shipper reconsigns or otherwise changes the destination of a shipment prior to delivery, the applicable rate shall be the rate that would be applied had Carrier been originally directed to deliver the shipment to the new destination via the location where the shipment was located at the time it was reconsigned, plus a reconsignment charge equal to \$ 1.50 per additional mile required by virtue of the reconsignment. If a shipment is reconsigned or otherwise assigned a new destination at the time of delivery, the applicable rate shall be the rate that would apply to a new shipment from the point of delivery to the new destination, and Carrier shall bill Broker for the reconsigned shipment as though it were a stop-off plus the reconsignment charge as stated above.
10. In-Transit Stop-Off / Drop Charges. A single shipment may be stopped at the direction of Broker for partial loading or partial unloading; provided, however, that in the event of any in-transit stop at the direction of Shipper or Shipper's consignee, Broker shall pay Carrier, in addition to other freight charges due \$100.00 per stop off required.
11. Tracking and Tracing. Carrier, to the best of its capabilities, shall make available in-transit load position and related load delivery status and tracing information at key milestone's in the freight's transit (in at shipper, out of shipper/in transit, in at consignee, delivery completed) by either email, telephone or other method of contact as agreed to by Broker and Carrier at the onset of the shipment.
12. C.O.D. Shipments. Carrier shall accept shipments with C.O.D. charges to collect if Shipper or Broker advises Carrier of the need for such service at the time of offering a load and checks the applicable box on the freight document. Carrier shall only accept money orders or certified checks from consignees unless Shipper otherwise indicates acceptance of an uncertified check. Carrier shall remit to Shipper the collection within fifteen (15) days of delivery. Broker will pay Carrier 0.5% of collected amount or \$25.00 collection charge for each collection shipment, whichever is greater with a maximum charge of \$150.00.

13. Loading and Unloading. If the services Carrier agrees to perform under this Agreement include loading and unloading, Carrier only shall be responsible for loading and unloading to the extent such services can be physically performed without mechanical assistance.

- (a). If Shipper or Shipper's consignee requires the use of a lumper (third-party loader or unloader), Carrier is required to advise Broker of such charge prior to the commencement of any loading or unloading of freight
- (b). If any loading and/or unloading is done by an operator of Carrier beyond the tailgate, including sorting or stacking or similar service, Broker will advise Carrier of the requirements prior to the load being tendered and rates for the service shall be negotiated at that time.
- (c). In the event that the Shippers' consignee requests the driver to move freight beyond the tailgate, including sorting or stacking or similar service, Carrier shall notify Broker as soon as practicable and Carrier's operator shall not commence either loading or unloading until such time as Carrier and Broker have come to an agreement on how to proceed.

14. Billing Weight. If freight charges are to be assessed in whole or part on billing weights, such weights shall be based on scale weight except that uniform or standard weights may be billed at average weight subject to verification by Carrier. Weight shall include protective materials used by Shipper in preparing the lading for shipment.

15. Exclusive Use of Vehicle. All shipments tendered by Broker to Carrier are to be considered exclusive, whether sealed or otherwise, unless shipment is identified in writing as a partial truckload or less than truckload shipment. If shipment will not fit inside of the trailer due to other freight, or dunnage being in the trailer, Broker will be obligated to pay the freight charges, minus the cost of recovery for the freight that was left off of the trailer.

16. Permits. Carrier shall secure any permits for any over-dimensional or overweight load and Broker agrees that Carrier may bill Broker the actual cost of any permits or those costs for the use of any required escort vehicles. If the over-dimensional or overweight movement requires the payment of tolls over normal truckload tolls, Broker shall pay Carrier the difference in charges.

17. Forwarding and Documentation Services. On any international or coastal intermodal service, Carrier will be responsible for notifying Broker if Driver is not given all required documents at Shipper. In the case of international shipments to Canada from the United States, Carrier will provide PARS number to Broker for the purposes of notifying the Canadian Customs Broker only.

18. Split Pickups on Shipper Premises. If Carrier is required to make pickups at two or more sites on a premises, providing the distance between the 2 points does not exceed one half mile, the second site will be considered a part of the same pickup. If Carrier is instructed by Shipper to proceed to a facility/location in excess of one half mile distance from the initial pickup location, Carrier is to notify Broker, to the best of its capabilities, either by phone, fax or email, prior to the driver departing the initial pickup location.

19. Proof of Delivery. A copy of a signed proof of delivery is required as a prerequisite to payment of freight charges and must be provided within 48 hours of freight delivery. Proof of delivery is defined as, but not limited to a scanned copy of the bill of lading signed by the consignee, or a clear and legible photograph of the signed bill of lading taken by the driver. AN EMAIL WITH A PRINTED NAME AND IN/OUT TIMES SHALL NOT BE ACCEPTED AS SATISFACTORY PROOF OF DELIVERY.

If Carrier has not provided satisfactory proof of delivery within the 48-Hour period, a rate penalty shall be applied per the below schedule until satisfactory proof of delivery is provided.

49 to 96 Hours: \$3.00 per hour

97 to 144 Hours: \$5.00 per hour

145 to 192 hours: \$7.00 per Hour

193 hours or greater: \$10.00 per hour

20. Tarping. All shipments requiring a flatbed trailer to move shall be tarped unless otherwise stated in writing by Broker.

- (a). No entity outside of Broker has the authority to authorize a load that was agreed upon to be tarped by the Parties to not be tarped
- (b). In the event that a flatbed load is not tarped when instructions were clearly communicated by Broker and confirmed by Carrier, Broker shall apply a rate penalty equal to the tarping charge set forth by the carrier but not less than \$150.00.

ATTACHMENT 2

DISPUTE RESOLUTION

Having entered into this Agreement in good faith, the Parties agree that the following shall occur if a dispute arises with regard to its application or interpretation.

1. Meet and Confer; Mediation. Either Party may give Prior Notice to the other regarding the existence of a dispute. Within the thirty (30) days following the date of the Notice, representatives of the Parties with full settlement authority shall meet and confer at least once in an effort to resolve the dispute among themselves. If such efforts fail, the Parties shall engage an experienced mediator upon such terms and such cost allocation as may be mutually agreeable to the Parties.
2. Arbitration. If after the expiration of the thirty (30) day period set forth in 11.1 a dispute is not resolved voluntarily, the Parties shall submit the matter for final and binding arbitration under the Commercial Rules of the American Arbitration Association (“AAA”), as modified herein, before a single arbitrator with appropriate subject matter expertise. Such arbitration shall take place at a mutually agreed location or, failing agreement on a location, then at a location most nearly equidistant between the respective headquarters locations of the Parties. The award of the arbitrator may be enforced in any court of competent jurisdiction.
3. Selection of Arbitrator. If the parties are unable to agree on a mediator or arbitrator, the parties shall each submit to the other a list of acceptable and qualified mediators or arbitrators in order of preference. The first name to appear on both lists shall be appointed the arbitrator. The arbitrator shall be reimbursed all expenses and compensated at his or her standard rate.
4. Discretion of Arbitrator.
 - (a) The arbitrator shall base the award on the terms of this Agreement, federal transportation law, including existing judicial and administrative precedence, and by the arbitration law of the Federal Arbitration Act, Title 9 U.S. Code. The arbitrator shall apply each in the order of precedence with the former having primary control.
 - (b) The arbitrator shall have the power to order the parties to present evidence, including documents or testimony that the arbitrator deems necessary to the rendering of a fair and equitable decision. The arbitrator shall have the final judgment, in accordance with the federal rules of civil procedure as to what evidence and testimony to permit to be entered in the proceeding and the weight to be accorded each.
 - (c) The arbitrator shall have no power to award punitive damages and any award of damages shall be limited to actual damages.
 - (d) The parties expressly agree that this Agreement shall confer no power or authority upon the arbitrator to render any judgment or award that is erroneous in its application of the terms of this Agreement or substantive law.
 - (e) The arbitrator shall render the award in writing and, unless both parties agree otherwise, shall include an explanation of the reasons for the award, which explanation may be limited to the extent necessary to support the award and need not attempt to cover all issues raised by the parties.
5. Equitable Relief. The arbitrator shall have the power to order equitable relief, including protection of the status quo pending the completion of the arbitration and the issuance of the decision. Pending the settlement of the dispute by voluntary means pursuant to paragraph 11.1 or the appointment of an arbitrator under paragraph 11.2, either party may go to a court of competent jurisdiction to seek equitable relief, including a temporary injunction or restraining order. Upon the appointment of the arbitrator, any relief granted by the court shall remain in effect until reversed or removed by the arbitrator or until a final arbitration decision is issued and entered.
6. Cargo Claims and Pricing Disputes. If a dispute involves a cargo claim or the pricing of Services, the provisions of Article 10 are subject to any inconsistent provision of Article 6 or Section 3 of Article 3, respectively.